

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEMTRON CORPORATION,

Plaintiff,

-vs-

Case No. 04-0387
Judge Avern Cohn

SAINT-GOBAIN CORPORATION,

Defendant.

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**ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT (D/E 455)**

This is a patent case. The patent-in-suit, U.S. Patent No. 6,679,573-B2 (the '573 patent), covers a Refrigerator Shelf. Defendant has filed a motion for summary judgment under 35 U.S.C. §112 -- Written Description Invalidity. Plaintiff has responded. The Court heard oral argument on the motion on May 7, 2007. "A patent is presumed to be valid, 35 U.S.C. § 282 (1994), and this presumption can be overcome only by facts supported by clear and convincing evidence to the contrary." Enzo Biochem v. Gem Pride, Inc., 323 F.3d 956, 962 (Fed. Cir. 2002). "Like the fact underlying conception and enablement, invalidating a claim requires a showing by clear and convincing evidence that the written description requirement has not been satisfied." Invitrogen Corporation v. Clontech Laboratories, Inc., 429 F.3d 1052, 1072 (Fed. Cir. 2005) citing Enzo Biochem, 323 F.3d at 962.

For the reasons stated on the record on May 7, 2007, the Court finds that there is a factual dispute over whether the written description requirement of the statute. 35 U.S.C. §112 has been met by the '573 patent and therefore defendant's motion for summary judgment is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 8, 2007

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, May 8, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160